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Order 2003-6-20



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the **13th day of June, 2003**

Served: June 13, 2003

Applications of

WORLD AIRWAYS, INC.

NORTHWEST AIRLINES, INC.

KALITTA AIR, INC.

**For exemptions pursuant to section 40109 of Title
49 U.S.C. and the orders and regulations of the
Department of Transportation
(U.S.-Iraq foreign air transportation)**

Dockets

OST-2003-15031

OST-2003-15135

OST-2003-15093

ORDER

Summary

By this order, we grant the applications of World Airways, Northwest Airlines, and Kalitta Air to provide, subject to further U.S. Government clearances, scheduled foreign air transportation between the United States and Iraq. The authorizations granted by this order cannot alone result in new service to Iraq. Rather, our action here is one of many steps towards restoring U.S.-Iraq commercial air service.

Background

By Order 90-8-16, served August 8, 1990, the Department imposed conditions on the authority held by U.S. and foreign air carriers that prohibited certain transactions relating to transportation to/from Iraq. The Department issued the Order to carry out Executive Order 12722, issued August 2, 1990, which had directed the imposition of certain economic sanctions against Iraq. Among other things, Order 90-8-16 prohibited U.S. carriers from selling in the United States any transportation by air that included a stop in Iraq. The order also prohibited U.S. air carriers from engaging in any transaction relating to transportation to or from Iraq.

On May 27, 2003, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) announced that it had issued a General License lifting implementation of the previous prohibitions relating to aviation set out in the Executive Order, which were the basis for Order 90-8-16. By Order 2003-5-35, the Department granted a blanket exemption from the conditions imposed by Order 90-8-16 to the extent consistent with the OFAC General License. The blanket exemption was subject to all Department of Transportation, Federal Aviation Administration, Transportation Security Administration, Department of Defense, and other U.S. government requirements.

Applications

The Department has received the following applications for exemption authority to serve Iraq:

- World Airways: filed April 23, 2003; Docket OST-2003-15031; to provide scheduled foreign air transportation of persons, property, and mail between the United States (Washington Dulles International Airport) and Baghdad, Iraq, via Geneva and Kabul, Afghanistan;¹
- Northwest Airlines: filed May 7, 2003; Docket OST-2003-15135; to provide scheduled foreign air transportation of persons, property, and mail between any point or points in the United States, via intermediate points, and any point or points in Iraq and beyond;² and for the authority to integrate its exemption authority here with all of Northwest's existing certificate and exemption authority to the extent consistent with U.S. bilateral agreements and DOT policy; and
- Kalitta Air: filed May 1, 2003; Docket OST-2003-15093; to provide scheduled foreign air transportation of property and mail between a point or points in the United States and a point or points in Iraq.³

¹World's application in the referenced docket also seeks exemption authority to provide scheduled foreign air transportation of persons, property and mail between the United States (Washington Dulles International Airport) and Kabul, Afghanistan via Geneva, Switzerland. We are deferring action on this aspect of its application as well as on its request to serve Kabul as an intermediate point on its service to Baghdad. We will process the Kabul requests by separate order.

²Northwest states that it may provide service by code sharing with KLM under the carriers' blanket Statement of Authorization to code share (undocketed). In this regard, Northwest gave 30 days notice in its application that KLM intends to display the Northwest code on KLM flights between Amsterdam and Baghdad, contingent upon the lifting of Iraq sanctions, and subject to receiving all necessary governmental authorities.

³Kalitta Air's exemption application also included a request for authority to provide all-cargo service to Kuwait and Jordan. By Notice of Action Taken dated June 9, 2003 in Docket OST-2003-15093, we granted that portion of Kalitta Air's application. In addition, the Department has received (1) certificate applications for U.S.-Iraq authority from World, Northwest, and North American Airlines in Dockets OST-2003-14991, OST-2003-15130, and OST-2003-14992, respectively; and (2) 30-day notices under blanket Statements of Authorization to Code Share by United/Lufthansa, filed May 5, 2003, (undocketed), and United/Austrian, filed May 5, 2003, (Docket OST-2000-6803), whereby United would place its code on flights operated by Lufthansa and Austrian between Frankfurt, Germany, and Vienna, Austria, respectively, on the one hand, and Baghdad, Iraq, on the other hand. We will process the certificate applications separately from this order. As to United's 30-day notices, they will take effect by their own terms, subject to the conditions contained in the blanket Statements of Authorization to Code Share. Several U.S. carriers, including United, already hold certificate authority to serve Iraq. Specifically, American Airlines, Delta Airlines, and United hold existing certificates on Routes 602, 616, and 603, respectively.

In support of their applications, the carriers state that their services would help support relief and reconstruction activities in Iraq.

Responsive Pleadings

Delta, Northwest, and Evergreen International Airlines filed consolidated answers.⁴

The Metropolitan Washington Airports Authority filed an answer in support of World's application.

Northwest states that the Department should grant its application simultaneously with the applications filed by other carriers for service to Iraq. Delta states that, unlike the carriers that have filed exemption applications, Delta already holds underlying authority to serve Baghdad by virtue of an existing certificate transferring route authority from Pan American World Airways to Delta.⁵ Delta states that it intends to serve Baghdad once all U.S. government restrictions on flights to Iraq are lifted. Delta and Northwest both argue that, to the extent that air service opportunities to Iraq may be limited, they are entitled to contemporaneous consideration along with other pending requests for U.S.-Iraq service.

Evergreen states that it does not oppose the applications to serve Iraq. However, Evergreen maintains that, prior to acting on the applications, the Department should determine the nature of the aviation relationship between the United States and Iraq. Evergreen states that if the relationship is to be "open," so that any U.S. airline interested in serving Iraq will be permitted to do so, then granting the applications would be in the public interest. Evergreen argues that if, on the other hand, the relationship is going to be a limited-entry situation, then the Department should not grant the applications, but rather institute a comparative selection proceeding and invite other U.S. airlines to file applications to serve Iraq. In this regard, Evergreen states that it is interested in providing all-cargo service in the U.S.-Iraq market once it is able to implement service in an expedited manner.

Decision

We have decided to grant the exemption requests so as to give the applicants the necessary underlying economic regulatory authority to provide service to Iraq.⁶ We believe that air service can play a critical role in facilitating relief and reconstruction efforts in Iraq as well as in promoting the establishment of a normal and functioning transportation environment. In these circumstances, we find that granting the exemption requests here is consistent with the public interest.

The Department is prepared to consider applications from other U.S. carriers that may be interested in serving Iraq if and when such applications are filed. Carriers holding authority to serve Iraq should anticipate that capacity at Baghdad International Airport (BIAP) will likely be limited at first when the airport re-opens for scheduled commercial service, and that all proposed services might not be accommodated. However, at this point, we are not persuaded that any

⁴The answers of Delta and Northwest were accompanied by motions for leave to file otherwise unauthorized documents. We will grant the motions.

⁵Delta cites Segment 3 of Route 616 (Order 91-10-33).

⁶We will also grant Northwest the route integration authority it requested.

allocation procedures are warranted in light of uncertainty with respect to the exact level of capacity constraints at BIAP compared to the level of proposed carrier service.

We remind any carrier seeking to exercise Iraq authority (underlying route authority and code-share authority) that such authority cannot alone result in new service to Iraq. It is subject to compliance with all applicable Department of Transportation, Federal Aviation Administration, Transportation Security Administration, Department of Defense, and other U.S. Government requirements. Further, to assure compliance with all applicable U.S. Government requirements concerning security, before commencing any new service (including charter flights) to or from a foreign airport, carriers are reminded to contact their Principal Security Inspector (PSI) to advise the PSI of their plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served.⁷

ACCORDINGLY,

1. We grant the applications of (a) World Airways, Inc. (Docket OST-2003-15031) for scheduled foreign air transportation of persons, property, and mail between the United States (Washington Dulles International Airport) and Baghdad, Iraq, via Geneva, Switzerland; (b) Northwest Airlines, Inc. (Docket OST-2003-15135) to provide scheduled foreign air transportation of persons, property, and mail between any point or points in the United States, via intermediate points, and any point or points in Iraq and beyond;⁸ and (c) Kalitta Air, L.L.C. (Docket OST-2003-15093) to provide scheduled foreign air transportation of property and mail between a point or points in the United States and a point or points in Iraq;
2. We grant the application of Northwest Airlines, Inc. (Docket OST-2003-15135) for authority to integrate its exemption authority here with all of Northwest's existing certificate and exemption authority to the extent consistent with U.S. bilateral agreements and Department of Transportation policy;
3. We defer action on the application of World Airways, Inc. (Docket OST-2003-15031) to the extent that it seeks exemption authority to serve Kabul, Afghanistan;
4. The authority granted in paragraphs 1 and 2 shall be effective upon the issue date of this order, and shall remain in effect through June 13, 2005;
5. The exemption authority granted to Northwest in Paragraph 1 to serve intermediate and beyond points is limited to countries with which the United States has signed open-skies agreements and/or countries for which the carrier holds authority to serve under certificates or exemptions issued by the Department, and for which it holds route

⁷On the basis of data officially noticeable, we found the applicants qualified to provide the services authorized. In taking this action, we found that grant of the authority would not constitute a major regulatory action under the Energy Policy and Conservation Act of 1975.

⁸With respect to Northwest's 30-day notice to code-share with KLM, it will take effect by its own terms, subject to the conditions contained in the blanket Statement of Authorization to Code Share (undocketed). However, we remind Northwest that its authority is subject to compliance with DOT, FAA, TSA, DOD, and other U.S. Government requirements.

integration authority, by virtue of either the present action or other action of the Department, and is subject to all conditions attached to that authority;

6. The route integration authority granted to Northwest in Paragraph 2 is subject to the condition that any service provided under this authority shall be consistent with the applicable bilateral aviation agreements between the United States and the foreign countries involved. Furthermore, (a) nothing in the award of this authority requested should be construed as conferring upon Northwest additional rights (including code-share, fifth-freedom intermediate and/or beyond rights) to serve markets where U.S. carrier entry is limited unless Northwest first notifies the Department of its intent to serve such a market and unless and until the Department has completed any necessary carrier selection procedures to determine which carrier(s) should be authorized to exercise such rights; and (b) should there be a request by any carrier to use the limited-entry route rights that are included in Northwest's authority by virtue of the route integration and code-share authority granted here, but that are not then being used by Northwest, the holding of such authority will not be considered as providing any preference for Northwest in a competitive carrier selection proceeding to determine which carrier(s) should be entitled to use the authority at issue;
7. We grant all motions for leave to file otherwise unauthorized documents;
8. Except to the extent exempted or waived, the authority granted is subject to the terms, conditions, and limitations as stated in this order and to those set forth in: (a) Holder's certificates of public convenience and necessity; and (b) Standard Exemption Conditions (attached);
9. To the extent not granted, we denied all requests in the referenced Dockets;
10. We may amend, modify, or revoke the authority granted in this order at any time without hearing at our discretion; and
11. We shall serve this order on the parties to the above-captioned dockets; Delta Air Lines, Inc.; American Airlines, Inc.; United Air Lines, Inc.; North American Airlines, Inc.; Evergreen International Airlines, Inc.; the Metropolitan Washington Airports Authority; the Federal Aviation Administration; the Transportation Security Administration; the Department of Defense; and the U.S. Department of State (Office of Aviation Negotiations).

By:

MICHAEL W. REYNOLDS
Acting Assistant Secretary for
Aviation and International Affairs

(SEAL)

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APPENDIX

U.S. CARRIER
Standard Exemption Conditions

In the conduct of operations authorized by the attached notice, the applicant(s) shall:

- (1) Hold at all times effective operating authority from the government of each country served;
- (2) Comply with applicable requirements concerning oversales contained in 14 CFR 250 (for scheduled operations, if authorized);
- (3) Comply with the requirements for reporting data contained in 14 CFR 241;
- (4) Comply with requirements for minimum insurance coverage, and for certifying that coverage to the Department, contained in 14 CFR 205;
- (5) Except as specifically exempted or otherwise provided for in a Department Order, comply with the requirements of 14 CFR 203, concerning waiver of Warsaw Convention liability limits and defenses;
- (6) Comply with the applicable requirements of the Federal Aviation Administration Regulations and with all applicable U.S. Government requirements concerning security;⁹ and
- (7) Comply with such other reasonable terms, conditions, and limitations required by the public interest as may be prescribed by the Department of Transportation, with all applicable orders and regulations of other U.S. agencies and courts, and with all applicable laws of the United States.

The authority granted shall be effective only during the period when the holder is in compliance with the conditions imposed above.

⁹To assure compliance with all applicable U.S. Government requirements concerning security, the holder should, before commencing any new service (including charter flights) to or from a foreign airport, contact its Principal Security Inspector (PSI) to advise the PSI of its plans and to find out whether the Transportation Security Administration has determined that security is adequate to allow such airport(s) to be served.